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Supreme Court of the United States

OCTOBER TERM, 1958

No. 137

LURTON LEWIS HEFLIN, JR., PETITIONER,

vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

Petition for Certiorari Filed March 31, 1958

Certiorari granted June 30, 1958

SUPREME COURT OF THE UNITED STATES

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No. 137

LURTON LEWIS HEFLIN, JR., PETITIONER,
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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16901

LURTON LEWIS HEFLIN, JR., *Defendant-Appellant*

v.

UNITED STATES OF AMERICA, *Respondent-Appellee.*

**Motion for Leave to Proceed on Appeal in This Court on
Original Record and Typewritten Briefs—Filed Sept.
28, 1957**

Lurton Lewis Heflin, Jr., the appellant in the above entitled cause respectfully asks leave of this Honorable Court for permission to proceed on appeal on the original record from the court below and on typewritten briefs.

IN SUPPORT HEREOF, petitioner states as follows:

That he is imprisoned in the United States Penitentiary, Alcatraz, California, and if he were required to proceed on printed records and briefs it would work a great hardship upon him.

That he has no attorney and has prepared his briefs in propria persona.

That he verily believes he has a meritorious cause and is proceeding in this Court in good faith.

Respectfully submitted,

LURTON LEWIS HEFLIN, JR.
Lurton Lewis Heflin, Jr.
Box 1189
Alcatraz, California

1a IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(Title omitted)

Appeal from the United States District Court
for the Northern District of Alabama

**Order Granting Leave to Proceed on Original Typewritten
Record and to File Typewritten Briefs—Sept. 28, 1957**

ON CONSIDERATION of the Motion filed by appellant in the
above entitled cause,

IT IS ORDERED that Appellant be, and he is hereby granted
permission to prosecute his appeal in this Court on the
original certified typewritten transcript of record.

IT IS FURTHER ORDERED that Appellant be permitted to
file four typewritten copies of his brief, in lieu of printed
copies.

(Signed) JOHN MINOR WISDOM
U. S. Circuit Judge.

September 28, 1957

1b IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

Docket Entries

Criminal Docket 13530—Southern

THE UNITED STATES

v.

1. SAMUEL JAY HORNBECK, alias Lawrence K. Baker, alias
Jerome E. Bryant, alias Jerry Bryant
2. CLETUS JOSEPH GOLDMAN, alias John L. Scott
3. LURTON LEWIS HEFLIN, JR., alias "Junior" Heflin

For Defendant:

5/3/54—John Tucker apptd for # 3

Violation:

18 USC 2113(a)—take by force money of bank, member
of Federal Reserve System, count 1

- 18 USC 2113(b)—take money of bank member of Federal Reserve System, count 2;
 18 USC 2113(d)—take by force money of member bank of Fed. Res., ct. 3
 18 USC 2113(c)—receive stolen money, knowing same to be stolen from bank, ct. 4
 18 USC 371—conspiracy to rob member bank of Federal Reserve, ct. 5

CASH RECEIVED AND DISBURSED

Date

Name

1957

Aug. 26 MO—E. H. Heflin for L. L. Heflin, Jr.—Not of Appeal
 Received—\$5.00

PROCEEDINGS

Date

1954

Feb. 26 Indictment filed

Feb. 26 General order for warrant filed and entered; warrants issued for Hornbeck and Goldman (shl)

Apr. 19 Order arraignment, waiver of counsel, and plea of not guilty entered as to Lurton Lewis Heflin, Jr.; order continuing for trial entered—hhg

Apr. 22 Petition for writ of habeas corpus ad prosequendum filed and order allowing filed and entered; writ issued—hhg

Apr. 26 One praecipe filed; 29 subpoenas issued for the United States

May 4 One praecipe filed; 1 subpoena issued for the United States

May 5 Petition for writ of habeas corpus ad test filed and order allowing filed and entered. hhg Writ issued

2

PROCEEDINGS

Date

1954

May 6 Two praecipes filed; 3 subpoenas issued for the United States

May 7 Petition of defendant Lurton Lewis Heflin for witnesses under Rule 17 b. filed. Motion to take depositions of Hornbeck and Denton filed and order overruling entered—hhg

- May 7 Order allowing defendant Heflin to subpoena witnesses under Rule 17 b filed and entered. shl Two subpoenas issued for defendant
- May 12 Order waiver of counsel as to Cletus Joseph Goldman entered and plea of guilty entered
- May 12 Motion of Lurton Lewis Heflin, Jr. for continuance, and order overruling entered; motion of Heflin to take deposition of Hornbeck refiled and order overruling entered; motion to take deposition of Denton refiled and order overruling entered
- May 12 Motion to dismiss indictment filed as to Heflin and order overruling entered
- May 12 Lurton Lewis Heflin, Jr., on trial before the Hon. H. H. Grooms and a jury and one alternate; introduction of government's testimony; daily adjournment; jury separated for night by agreement of counsel
- May 13 Trial resumed; government's testimony continued; daily adjournment; jury separated by agreement of counsel for night
- May 14 Trial resumed; motion of defendant for judgment of acquittal filed and order overruling entered; motion renewed to take deposition of Hornbeck and order overruling entered: introduction of defendant's testimony; daily adjournment; jury separated for night by agreement of counsel
- May 15 Trial resumed; defendant's testimony continued; government's rebuttal testimony; motion for judgment of acquittal renewed and order overruling entered; motion for mistrial and order overruling entered; argument of counsel; oral charge of the court; Jury and Verdict Guilty filed as to Heflin; order continuing to May 17 for sentence entered (HHG)
- May 17 Sentence: Lurton Lewis Heflin, Jr.—Ten (10) Years under count 3; Five (5) Years under count 1; Three (3) Years under count 5; One (1) Year and One (1) Day under count 2; One (1) Year and One (1) Day under count 4; all sentences to run consecutively with each other in the order recited and not to run concurrently with any other sentence, state or federal (total of 20 years and 2 days) GROOMS, J.
(reduced to 14 years 1 day on 8-14-55)

May 17 Temporary commitment issued as to Heflin
 May 17 Certified copies of judgment and commitment delivered to United States marshal and to Heflin

3

PROCEEDINGS

Date
 1954

May 20 Motion for new trial filed on behalf of Lurton Lewis Heflin, Jr.
 May 7 Order overruling motion to take deposition of Samuel Jay Hornbeck filed and entered. shl
 May 25 Writ of habeas corpus ad test returned executed and filed as to Patsy Ruth Hornbeck
 May 25 Writ of habeas corpus ad pros returned executed and filed as to Cletus Joseph Goldman
 June 10 Motion of defendant Lurton Lewis Heflin, Jr., to appeal in forma pauperis, filed.
 June 30 Order overruling motion for new trial filed and entered. hhg
 Copy mailed to counsel for defendant
 June 30 Order allowing appeal in forma pauperis, filed and entered. hhg
 July 8 Notice of Appeal filed in forma pauperis as to Heflin
 July 8 Temporary commitment returned executed and filed as to Heflin
 July 8 Final commitment returned executed and filed as to Heflin (Atlanta)
 July 9 Clerk's Statement of Docket Entries mailed to U. S. Court of Appeals, together with duplicate notice of appeal
 Aug. 13 Order extending time for filing record of appeal until Sept. 20, 1954, (HHG) transmitted to U.S.C.A. for filing
 Aug 19 Stenographic record of proceedings had Apr 19 & May 17 '54, filed
 Aug. 19 Stenographic record of proceedings had May 12, 1954, filed
 Sept. 2 Order to transmit certain original exhibits with record on appeal filed and entered. hhg

Date

1955

Sept. 7 Mandate of U. S. Court of Appeals dated September 6, 1955, reciting opinion of June 15, 1955, reversing convictions under counts 1 and 2, and affirming convictions under counts 3, 4, and 5; filed

Sept. 14 Order correcting judgment and commitment of Lurton Lewis Heflin to show defendant is guilty under counts 3, 4, and 5, and sentencing him to 10 years under count three; three years under 5 to begin upon expiration of sentence imposed under count three; one year and one day under count 4 to begin upon expiration of sentence imposed under count 5—Grooms, J. Certified copies delivered to United States marshal

Nov. 10 Stenographic record of proceedings had May 12, 1954, filed

Nov. 28 Sentence: Cletus Joseph Goldman: Five (5) years, to run concurrently with sentence defendant is now serving—Grooms, J.

4

PROCEEDINGS

Date

1955

Nov. 28 Certified copies of judgment and commitment delivered to United States marshal as to Cletus Joseph Goldman

Dec. 14 Motion of United States to abate indictment filed and order abating indictment as to Samuel Jay Hornbeck filed and entered. hhg

Certified copy delivered to U. S. Marshal

1956

Jan. 18 Commissioner's proceeding filed as to Hornbeck

Jan. 18 Commissioner's proceeding as to Goldman filed

Jan. 18 Final commitment as to Goldman returned executed and filed (Danbury, Conn.)

Jan. 18 Writ ad test as to Goldman returned executed and filed

Jan. 18 Warrant as to Hornbeck returned unexecuted and filed (defendant executed in Fla.)

July 18 Stenographic record of proceedings had 11/28/55 filed

Date
1957

May 14 Motion for correction of sentence filed by defendant Lurton Lewis Heflin, Jr. Copy served on U. S. Attorney

July 29 Order overruling motion to correct sentence filed and entered. hhg Certified copies transmitted to movant and movant's counsel

Aug. 26 Notice of appeal filed by Lurton Lewis Heflin, Jr.

Aug. 26 Designation of record, filed

6

(File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

No. 13530

UNITED STATES OF AMERICA

v.

SAMUEL JAY HORNBECK,
alias Lawrence K. Baker,
alias Jerome E. Bryant,
alias Jerry Bryant

CLETUS JOSEPH GOLDMAN,
alias John J. Scott

LURTON LEWIS HEFLIN, JR.,
alias "Junior" Heflin,

Indictment—Filed Feb. 26, 1954

COUNT ONE: (18 U.S.C. 2113(a))

The Grand Jury charges:

That on or about the 23rd day of January, 1953, at or near Birmingham, within the Southern Division of the Northern District of Alabama, the defendants,

SAMUEL JAY HORNBECK,
alias Lawrence K. Baker,
alias Jerome E. Bryant,
alias Jerry Bryant

CLETUS JOSEPH GOLDMAN,
alias John J. Scott

LURTON LEWIS HEFLIN, JR.,
alias "Junior" Heflin,

whose names are otherwise unknown to the Grand Jury, and are hereinafter denominated defendants, did, unlawfully, wilfully, knowingly and feloniously, and by force and violence, and by intimidation, take from the person and presence of one Lawrence H. Brice, money exceeding the value of \$100.00, to wit: Fifty-Three Thousand One Hundred Seventy-two Dollars and Seventy-Three Cents (\$53,172.73), in currency of the United States, said money then and there belonging to, and being in the care, custody, control, management and possession of the West End Branch of the First National Bank of Birmingham, Alabama, located at Birmingham, Alabama, which said bank is, and at all times herein mentioned was, organized and operating under the laws of the United States, and a member of the Federal Reserve System.

7 COUNT TWO: (18 U.S.C. 2113(b))

The Grand Jury further charges:

That on or about the 23rd day of January, 1954, at or near Birmingham, within the Southern Division of the Northern District of Alabama, the defendants,

SAMUEL JAY HORNBECK,
alias Lawrence K. Baker,
alias Jerome E. Bryant,
alias Jerry Bryant

CLETUS JOSEPH GOLDMAN,
alias John J. Scott

LURTON LEWIS HEFLIN, JR.,
alias "Junior" Heflin,

whose names are otherwise unknown to the Grand Jury, and are hereinafter denominated defendants, did, unlawfully, wilfully, knowingly, and feloniously take and carry away, with intent then and there to steal and purloin, money, exceeding the value of \$100.00, to wit: Fifty-Three Thousand One Hundred Seventy-Two Dollars and Seventy-Three Cents (\$53,172.73), in currency of the United States, said money then and there belonging to, and being in the care, custody, control, management and possession of the West End Branch of the First National Bank of Birmingham, Alabama, located at Birmingham,

Alabama, which said bank is, and at all times herein mentioned was, organized and operating under the laws of the United States, and a member of the Federal Reserve System.

COUNT THREE: (18 U.S.C. 2113(d))

The Grand Jury further charges:

That on or about the 23rd day of January, 1953, at or near Birmingham, within the Southern Division of the Northern District of Alabama, the defendants,

SAMUEL JAY HORNBECK,
 alias Lawrence K. Baker,
 alias Jerome E. Bryant,
 alias Jerry Bryant
CLETUS JOSEPH GOLDMAN,
 alias John J. Scott
LURTON LEWIS HEFLIN, JR.,
 alias "Junior" Heflin,

whose names are otherwise unknown to the Grand Jury, and are hereinafter denominated defendants, did, unlawfully, wilfully, knowingly, and feloniously, and by force and violence, and by intimidation, take from the person and presents of one Lawrence H. Brice, money exceeding the value of \$100.00, to wit: Fifty-Three Thousand One Hundred Seventy-Two Dollars and Seventy-Three Cents (\$53,172.73), in currency of the United States, said money then and there belonging to, and being in the care, custody, control, management and possession of the West End Branch of the First National Bank of Birmingham, Alabama, located at Birmingham, Alabama, which said bank is, and at all times herein mentioned was, organized and operating under the laws of the United States, and a member of the Federal Reserve System; and in the taking and carrying away of said money, as aforesaid, the said defendants did, then and there, unlawfully, wilfully, knowingly, and feloniously, assault and jeopardize the lives of the said Lawrence H. Brice and Louis L. Sandefur, William R. Zeigler, Emily Hicks, Elnora Moore, Ann Yarbrough, Elizabeth Prater, Barbara Lovingood, Jean Glover, Mildred Glenn, Doris

Loden, and Betty Johnson by the use of dangerous weapons, to wit: pistols and revolvers, which said pistols and revolvers said defendants did then and there unlawfully point at the persons of the said Lawrence H. Brice and Louis L. Sandefur, William R. Zeigler, Emily Hicks, Elnora Moore, Ann Yarbrough, Elizabeth Prater, Barbara Lovingood, Jean Glover, Mildred Glenn, Doris Loden, and Betty Johnson.

COUNT FOUR: (18 U.S.C. 2113(c))

The Grand Jury further charges:

That between the dates January 23, 1953, and continuously, to wit: February 24, 1954, at or near Birmingham, within the Southern Division of the Northern District of Alabama, the defendants,

SAMUEL JAY HORNBECK,
alias Lawrence K. Baker,
alias Jerome E. Bryant,
alias Jerry Bryant
CLETUS JOSEPH GOLDMAN,
alias John J. Scott
LURTON LEWIS HEFLIN, JR.,
alias "Junior" Heflin,

whose names are otherwise unknown to the Grand Jury, and are hereinafter denominated defendants, did, unlawfully, wilfully, and knowingly, receive, possess, conceal, store, and dispose of money in excess of the value of \$100.00, to wit: Fifty-Three Thousand One Hundred Seventy-Two Dollars and Seventy-Three Cents (\$53,172.73) in currency of the United States, said defendants then and there knowing said money to have been taken and carried away from the care, custody, control, management, and possession of the West End Branch of the First National Bank of Birmingham, Alabama, said Bank located in Birmingham, Alabama, within the Southern Division of the Northern District of Alabama, with the intent then and there to steal and purloin the same, said Bank then and there, and at all times herein mentioned being organized and operating under the laws of the United States, and a member of the Federal Reserve System.

COUNT FIVE: (18 U.S.C. 371)

The Grand Jury further charges:

That heretofore, to wit, at sometime during the period commencing on or about January 1, 1953, and extending to on or about, to wit, February 24, 1954, the said defendants SAMUEL JAY HORNBECK, alias Lawrence K. Baker, alias Jerome E. Bryant, alias Jerry Bryant, CLETUS JOSEPH GOLDMAN, alias John J. Scott, LURTON LEWIS HEFLIN, JR., alias "Junior" Heflin, and others, whose names to the Grand Jury are unknown, hereinafter denominated defendants, did, within the Southern Division of the Northern District of Alabama, and within the jurisdiction of this Honorable Court, unlawfully, wilfully, knowingly, and feloniously combine, conspire, confederate, and agree together and with each other and with other persons whose names to the Grand Jury are unknown, to commit various offenses against the United States, to wit: the offenses denounced by Sections 2113(a), 2113(b), 2113(c), and 2113(d), Title 18, U.S.C., said offenses being set forth in Counts 1, a, 3, and 4 of this indictment, which said counts are all hereby realleged and reaffirmed as if set forth at length herein, and hereby made a part of this count.

And in furtherance of said unlawful combination, conspiracy and agreement, and for the purpose of effecting the object thereof, said defendants herein named did commit and do the following overt acts:

1. On or about January 23, 1953, the said defendants did, at Birmingham, Alabama, in Jefferson County, within the Northern Judicial District of Alabama, unlawfully, wilfully, knowingly and feloniously take and carry away, with intent then and there to steal and purloin, money, exceeding the value of \$100.00, to wit: Fifty-Three Thousand One Hundred Seventy-Two Dollars and Seventy-Three Cents, (\$53,172.73) in currency of the United States, said money then and there belonging to and being in the care, custody, control, management and possession of the West End Branch of the First National Bank of Birmingham at Birmingham, Alabama, which said Bank is, and at all times herein mentioned was, organized and op-

erating under the laws of the United States, and a member of the Federal Reserve System.

A True Bill

N. C. WALLACE, JR.

Foreman of the Grand Jury

[Signature Illegible]

United States Attorney

11 IN UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

Mandate—September 6, 1955

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable the Judge of the United States District Court for the Northern District of Alabama—Greetings:

WHEREAS, lately in the United States District Court for the Northern District of Alabama, before you, in a cause between United States of America, plaintiff, and Lurton Lewis Heflin, Jr., alias "Junior" Heflin, defendant, Criminal No. 13530, wherein the judgment of the District Court entered in said cause on the 17th day of May, A. D., 1954, was in favor of plaintiff, United States of America, and against defendant, Lurton Lewis Heflin, Jr., alias "Junior" Heflin, as by the inspection of the transcript of record of the said District Court, which was brought into the United States Court of Appeals for the Fifth Circuit, by virtue of an appeal sued out by Lurton Lewis Heflin, Jr., agreeably to the act of Congress in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-four, the said cause came on to be heard before the said United States Court of Appeals, on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the convictions of counts 1 and 2 of the said District Court in this cause be, and they are hereby, reversed; the convictions of counts 3, 4 and 5, be, and they are hereby, affirmed; and that this cause be,

and it is hereby, remanded to the said District Court for vacation of the erroneous sentence and the imposition of sentence in accordance with the principles expressed in the opinion of this Court.

June 15, 1955.

12 YOU, THEREFORE, ARE HEREBY COMMANDED that such execution and further proceedings be had in said cause as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

WITNESS the Honorable EARL WARREN, Chief Justice of the United States, the 6th day of September, in the year of our Lord one thousand nine hundred and Fifty-five.

JOHN A. FEEHAN, JR.
Clerk, U. S. Court of Appeals
for the Fifth Circuit.

13

(File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

No. 13530

UNITED STATES OF AMERICA

v.

LURTON LEWIS HEFLIN, JR., *alias* "Junior" Heflin

Corrected Judgment and Commitment—September 14, 1955

WHEREAS, the defendant, Lurton Lewis Heflin, Jr., was convicted upon his plea of not guilty by a jury verdict of guilty for the offense of:

on or about January 23, 1953, feloniously and by force and violence, and by intimidation, taking from the person and presence of a certain person, money exceeding the value of \$100, said money then and there belonging to, and being in the custody and possession of a bank organized and operating under the laws of the United States and being a member of the Federal

Reserve System, as charged in *count one* of the indictment;

on or about January 23, 1953, feloniously taking and carrying away, with intent to steal, money exceeding the value of \$100, said money belonging to, and being in the custody of, a bank organized and operating under the laws of the United States, and being a member of the Federal Reserve System, as charged in *count two* of the indictment;

on or about January 23, 1953, feloniously and by force and violence, and by intimidation, taking from the person and presence of a certain person money exceeding the value of \$100, which money belonged to, and was in the custody of a bank organized and operating under the laws of the United States and being a member of the Federal Reserve System, and in the taking and carrying away of said money, assaulting and jeopardizing the lives of certain persons by the use of dangerous weapon, or weapons and by pointing a pistol or revolver at the persons of certain people, as charged in *count three* of the indictment;

between the dates of January 23, 1953, and continuously to, to-wit: February 24, 1954, receiving, possessing, concealing, storing, and disposing of money in excess of the value of \$100, knowing said money to have been taken from the care, custody, control, and possession of a member bank of the Federal Reserve System, with intent to steal and purloin said money, as charged in *count four* of the indictment.

on, to-wit, January 1, 1953, and extending to or about February 24, 1954, combining, conspiring, and agreeing with each other and with divers persons to commit various offenses against the United States as set out in Sections 2113(a), 2113(b), 2113(c), and 2113(d), Title 18, U.S.C., to-wit, taking money belonging to a member bank of the Federal Reserve System by force and violence and putting persons in jeopardy of their lives by use of a dangerous weapon in so doing, and with intent to steal said money, and receiving, possessing, and disposing of money stolen from a member bank of the Federal Reserve System, knowing same to have been stolen, as charged in *count five* of the indictment.

14 AND WHEREAS, the United States Court of Appeals for the Fifth Circuit on the 15th day of June, 1955, ordered and adjudged that the convictions of this defendant under counts one and two be reversed and vacated, and, further, that the convictions of this defendant under counts three, four, and five be affirmed,

AND WHEREAS, the said United States Court of Appeals for the Fifth Circuit on the 6th day of September, 1955, issued to this Court a mandate ordering this Court to put such into effect:

It is, therefore, the ORDER and JUDGMENT of this Court that the defendant is guilty as charged and convicted under counts three, four, and five.

It is the further ORDER and JUDGMENT of this Court that the convictions of this defendant under counts one and two are hereby vacated and set aside.

It is the further ORDER and JUDGMENT of this Court that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years under count three; three (3) years under count five to begin upon the expiration of the sentence imposed under count three; one (1) year and one (1) day under count four to begin upon the expiration of the sentence imposed under count five.

It is ADJUDGED that no sentence imposed under any count shall run concurrently with the sentence imposed under any other count; but said sentences are to run consecutively. It is further ORDERED that the sentences in this case are not to run concurrently with the sentence of any state or federal court heretofore imposed, or which may hereafter be imposed.

It is ORDERED that the clerk deliver three certified copies of this corrected judgment and commitment to the United States marshal or other qualified officer and that a copy serve as the commitment of the defendant.

DONE, this the 14 day of September, 1955.

H. H. GROOMS

H. H. Grooms

United States District Judge

(File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

(Title omitted)

Motion for Correction of Sentence—Filed May 14, 1957

The Motion For Correction of Sentence of LURTON LEWIS HEFLIN, JR. represents as follows:

1. That this motion is filed pursuant to Rule 35, Fed. Rules of Criminal Procedure and/or Title 28, USCA, 2255.
2. That the defendant is presently confined in the United States Penitentiary, Alcatraz, California under the judgment and commitment of this Court.
3. That the defendant is serving consecutive sentences for violation of Subsections of Title 18, USCA, 2113 as follows: Subsection (d)—ten (10) years; Subsection (c)—one (1) year and one (1) day.
4. That defendant moves that the sentence under Count IV (18 § 2113(c)), be vacated and the judgment and commitment be corrected to reflect said vacation.
5. That defendant submits that the aforesaid sentence under Count IV is illegal for the following reasons, to-wit:
 - (a) Congress did not intend that the "taker" in a bank robbery be subjected to additional punishment for receiving, concealing, storing and disposing of the same money he is charged with taking.
 - (b) The offense described in Count IV of the indictment merged in to the greater offense of bank robbery charged in Count III.
6. That a memorandum is filed herewith and made a part hereof in support of this motion.

WHEREFORE, defendant prays that the sentence of one year and one day imposed on Count IV of the indictment be vacated and the commitment be corrected.

Respectfully submitted,

LURTON L. HEFLIN, JR.
Lurton Lewis Heflin, Jr.

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Cr. No. 13530

(Title omitted)

**Memorandum in Support of Motion for Correction of
Sentence—Filed May 14, 1957**

Rule 35, Federal Rules of Criminal Procedure provides that: "The Court may correct an illegal sentence at any time."

Title 28, USCA, 2255 provides that a motion to correct an illegal sentence may be made at any time. An attack by motion under § 2255 is not premature if filed during first of consecutive sentences. *Young v. United States*, 190 F. 2d 558.

(A)

Congress did not intend that the "taker" in a bank robbery be subject to additional punishment for receiving and disposing of the same money he is charged with taking.

Count IV charged that defendant did: "receive, possess, conceal, store and dispose of money" that he is charged with taking in Count III.

By the text of Section 2113 (c) it is evident that it was the intention of Congress in enacting Subsection (c) of the bank robbery statute (2113) that it was applicable *only* to others than those prosecuted and convicted as the "takers".

In pertinent part, Subsection (c) reads as follows:

" * * in violation of subsection (b) of this section shall be subject to the punishment provided by subsection (b) for the taker."* (Emphasis supplied)

The phrase "for the taker" makes it clear that Congress intended this statute to punish others than those punished as the actual takers. The petitioner was convicted and

sentenced under Subsection (d) (Count III) as the taker under aggravated circumstances. It is obvious that the constitutional prohibition against subjecting a defendant to more than one punishment in the federal courts for the same offense would bar a separate sentence for taking, receiving, possessing, concealing, storing and disposing of the same money. They were all ingredients of a single transaction, i.e., bank robbery.

The original Bank Robbery Act was passed in 1934, 48 Stat. 783. It covered only robbery, robbery accompanied by an aggravated assault, and homicide perpetrated in committing a robbery or escaping thereafter. In 1937 the Attorney General requested that the Act be amended. The act was amended accordingly to add other crimes less serious than robbery. The object of this revision was to bring lesser offenders within the scope of the bank robbery act. *Prince v. United States*, 77 S. Ct. 403. The defendant was punished as the robber (Count III) and as the receiver, etc., (Count IV). The case of *Prince v. United States* is now controlling. The sentence on Count IV should be vacated.

(B)

The offense described in Count IV of the indictment merged into the greater offense of bank robbery charged in Count III.

The Circuit Courts have consistently held that only one sentence may be imposed upon any and all of the subsections of Section 2113. This rationale has recently been upheld in *Prince v. U. S.*, supra.

In *Lockart v. United States*, 136 F. 2d 122, 124, the court said:

"Although the indictment contained three counts, the statute upon which it was based creates only one crime." (Emphasis supplied)

A case four square with the position of the defendant is *United States v. Gebbart*, D.C. Neb., 1947, 70 F. Supp. 824, affirmed 163 F. 2d 962:

"Where act involved in several counts of indictment under former section 588(b) of Title 12 dealing

with robbery of bank, of assault in committing or attempting to commit bank robbery, and receiving or disposing stolen goods, is the same, a single offense is committed for which only a single sentence may be imposed."

Cases which hold that the subsections of section 2113 are merged into the most aggravated circumstances and upon which but a single sentence may be impose are:

- 18 *United States v. Gebbart*, 163 F. 2d 962
Prince v. United States, 77 S. Ct. 402
Lockart v. United States, 136 F. 2d 122, 124
Dimenas v. United States, 130 F. 2d 465, 466
Wells v. United States, 124 F. 2d 334, 335
Hewitt v. United States, 110 F. 2d 1, 11
Durrett v. United States, 107 F. 2d 438, 439
United States v. LaMolinare, 55 F. Supp. 730
Miller v. United States, 147 F. 2d 372
O'Keith v. United States, 158 F. 2d 591, 592
Simunov v. United Staes, 162 F. 2d 314
Garrison v. Reeves, 116 F. 2d 978
Holiday v. United States, 130 F. 2d 988
Wilson v. United States, 145 F. 2d 734, 736
Holbrook v. United States, 149 F. 2d 230
United States v. Trumblay, 141 F. Supp. 80

As the defendant was sentenced under subsection (d), by the applicable law the offense charged under Count IV (subsection (C) merged into the greater offense charged in Count III, (subsection (d)).

CONCLUSION

The defendant was sentenced under Subsection (d) which encompassed the included offense of receiving, possessing, concealing, storing and disposing of the money he was accused of taking under Count III. The sentence of one year and one day imposed under Count IV therefore should be vacated.

LURTON L. HEFLIN, JR.
 Lurton Lewis Heflin, Jr.,
Defendant

(File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

(Title omitted)

**Decree Denying Defendant's Motion for Correction of
Sentence—July 29, 1957**

This cause coming on to be heard on the motion docketed of July 29, 1957, at 9:30 o'clock, a.m., was submitted to the court on the motion of the defendant of the Lurton Lewis Heflin, Jr., for correction of a sentence heretofore imposed on said defendant. Basically, the contention of the defendant is grounded on the premise that the offense described in count four of the indictment (18 U.S.C. 2113(c)) merged into the offense described in count three of said indictment (18 U.S.C. 2113(d)). The Honorable John S. Tucker, Jr. was duly appointed by the court to represent the interests of said defendant on his said motion. After due consideration of said motion, the court is of the opinion that said motion presents solely a question of law and that the files and records conclusively show that the defendant is entitled to no relief. See *Heflin v. United States*, 5th Cir. 223 F. (2) 371, 376. Cf *Horn v. United States*, 5th Cir. decided June 10, 1957, which cited *Prince v. United States* 352 U.S. 322, as not holding contra.

It is therefore, ORDERED, ADJUDGED and DECREED by the court that the defendant's motion for correction of his sentence be and the same is hereby overruled and denied.

DONE and ORDERED this, the 29th day of July, 1957.

H. H. GROOMS

H. H. Grooms

United States District Judge

20

(File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

(Title omitted)

Notice of Appeal—Filed August 26, 1957

Name and Address of Appellant:

Lurton Lewis Heflin, Jr.
Box 1189, Alcatraz, Calif.

Judgment:

14 years and 1 day
Violation Title 18 U.S.C.
Section 2113

Order Appealed From:

Denial of Motion for
Correction of Sentence
(Title 28 U.S.C. Sec. 2255).

Judge Issuing Order:

Hon. H. H. Grooms
District Judge

Date of Order:

July 30, 1957

Notice of appeal is hereby given from the above order
to the United States Court of Appeals for the Fifth Cir-
cuit.

LURTON LEWIS HEFLIN, JR.

21

(File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

(Title omitted)

Designation of Record—Filed Aug. 26, 1957

The following records and documents are hereby desig-
nated as the record on appeal in the above entitled cause:

1. Docket Entries in Case No. 13530

2. Indictment No. 13530
3. Judgment and Commitment No. 13530
4. Motion to Correct Sentence.
5. Memorandum to Motion.
6. Order Denying Motion.
7. Notice of Appeal.
8. Designation of Record.

LURTON L. HEFLIN, JR.

22

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

(Title omitted)

**Designation by Appellee of Additional Matter to be Included
in the Record on Appeal—Filed September 3, 1957**

Comes the appellee, the United States of America, as authorized by Rule 75(a) of the Federal Rules of Civil Procedure, which said rule is made applicable in criminal proceedings by Rule 39(b)(1) of the Federal Rules of Criminal Procedure, and designates the following additional matter to be included in the record on appeal in this cause in addition to those already designated by the appellant Lurton Lewis Heflin, Jr.:

1. The mandate of the United States Court of Appeals for the Fifth Circuit, in Case Number 15,161, styled Lurton Lewis Heflin, Jr., appellant, vs. United States of America, appellee, and dated September 6, 1955.

WILLIAM G. WEST, JR.,
William G. West, Jr.
*Assistant United States
Attorney*

Certificate of Service

(Omitted in printing)

23

(Clerk's Certificate to foregoing transcript omitted in printing)

25

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16901

LURTON LEWIS HEFLIN, JR.,

VERSUS

UNITED STATES OF AMERICA.

Submission of Cause—January 9, 1958

On this day this cause was called and, was taken under submission by the Court upon the record and briefs on file.

26

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16901

LURTON LEWIS HEFLIN, JR., *Appellant*,

VERSUS

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the
Northern District of Alabama

Per Curiam Opinion—January 24, 1958

Before HUTCHESON, Chief Judge, TUTTLE, Circuit Judge,
and HANNAY, District Judge

PER CURIAM: This appeal from an order denying appellant relief in a Section 2255 motion asks us to reverse the judgment we heretofore entered when the case was before us on direct appeal from appellant's conviction. Appellant was convicted on three counts of a bank robbery indictment, including counts based on a violation of

27 18 U.S.C.A. § 2113(d) and 18 U.S.C.A. § 2113(c). Subsection (d) is the section making criminal the act of taking or attempting to take from the person or presence of another money belonging to a bank, during the commission of which attempt or taking another is assaulted or put in jeopardy by the use of a dangerous weapon. Subsection (c) is the provision that outlaws the receipt, possession, concealment or disposition of money "knowing the same to have been stolen from a bank. . . ."

Upon his original appeal from his conviction we held that "*receiving stolen money and conspiracy are offenses separate from bank robbery and consist of distinctly different elements.*" *Heflin v. United States*, 5 Cir., 223 F. 2d 371. We thus expressly held that Heflin was not entitled to the relief he here seeks. In the absence of a claim that such prior judgment of this court was in some way brought about under circumstances that would deprive the court of the power to act, we cannot now review or reconsider that judgment. It is not inappropriate, however, to say that we think it perfectly clear that the offenses set out in Sections (c) and (d) are distinct crimes and neither is merged into the other. This court has reaffirmed this view in *Horne v. United States*, 5 Cir., 246 F. 2d 83. Nothing in *Prince v. United States*, 352 U.S. 322, hold to the contrary.

The judgment is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

No. 16901

LURTON LEWIS HEFLIN, JR.,

VERSUS

UNITED STATES OF AMERICA.

Judgment—January 24, 1958

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Dis-

strict Court in this cause be, and the same is hereby, affirmed.

30 (Clerk's Certificate to foregoing transcript omitted in printing)

31 SUPREME COURT OF THE UNITED STATES

(Title omitted)

**Order Granting Motion for Leave to Proceed in Forma Pauperis and Granting Petition for Writ of Certiorari—
June 30, 1958**

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 1104 and assigned for argument immediately following No. 1102.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.